

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 21, 2003

IN RE:

PETITION OF CITIZENS COMMUNICATIONS COMPANY
OF TENNESSEE LLC FOR EXEMPTION UNDER TENN.
CODE ANN. § 65-5-208(c)

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DOCKET NO.
03-00211

ORDER HOLDING DOCKET IN ABEYANCE

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 7, 2003 for consideration of the *Petition for Exemption Under Tenn. Code Ann. § 65-5-208(c)* ("Petition for Exemption") filed by Citizens Communications Company, LLC ("Citizens") on March 19, 2003 and the *Petition to Intervene and/or Response or Motion to Dismiss of Ben Lomand Communications, Inc.* ("Petition to Intervene") filed on April 10, 2003.

BACKGROUND

Citizens is an incumbent local exchange carrier ("ILEC") serving Weakley, Putnam and Cumberland Counties and the Cities of Sparta and McMinnville in White and Warren Counties, respectively. Ben Lomand Communications, Inc. ("BLC") is a competing local exchange carrier ("CLEC") certificated to provide service in the Counties of Warren and White which include the Citizens' service areas of McMinnville and Sparta.¹

¹ See *Application of Ben Lomand Communications, Inc. for a Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services as a Competing Telecommunications Service Provider*, Docket No. 98-00600 (*Order Granting Certificate of Convenience and Necessity*) (April 28, 1999).

In response to the competitive entry of BLC in its service area, Citizens advanced several promotions,² including an April 11, 2002 tariff that purportedly offered certain discounts and rate reductions limited to business customers located in Sparta and McMinnville. On November 12, 2002, BLC filed a complaint against Citizens, which was assigned Docket No. 02-01221, alleging that the terms of Citizens' April 11, 2002 tariff filing are discriminatory and the rates therein are predatory.³ At the January 27, 2003 Conference, the Authority convened a contested case in Docket No. 02-01221 on the portion of Ben Lomand's complaint alleging predatory pricing.⁴ That docket is proceeding toward a hearing scheduled for September 22, 2003 with discovery having been commenced.

On March 19, 2003, Citizens filed the *Petition for Exemption* at issue herein, requesting that its tariffed services offered in McMinnville and Sparta, Tennessee, including the same tariffed services which are the subject of the predatory pricing allegations in Docket No. 02-01221, be exempted from the price floor set in Tenn. Code Ann. § 65-5-208(c) in order to combat the stiff competition advanced by BLC. Citizens argues that the price floor imposed under Tenn. Code Ann. § 65-5-208(c), which does not apply to BLC as a CLEC, provides an unwarranted competitive advantage to BLC. On April 10, 2003, BLC filed its *Petition to Intervene*, arguing that the Authority

² For example, the Authority approved two tariffs filed by Citizens, Tariff Nos. 2000-00963 and 2000-00965, which created price differences in McMinnville and Sparta but not in the remainder of Citizen's service territory. In addition, on January 24, 2002, Citizens filed a promotional tariff limited to customers in its McMinnville and Sparta exchanges. The Consumer Advocate and Protection Division of the Attorney General ("CAPD") sought intervention, alleging that the tariff was discriminatory as it was limited to McMinnville and Sparta to the exclusion of other areas served by Citizens. The Authority found that the competitive pressures isolated in McMinnville and Sparta justified limiting the tariff offering to those exchanges. See *Petition of Citizens Communications Company of Tennessee for Approval of Residential "Win-back" Promotion in the McMinnville and Sparta Exchanges*, Docket Number 02-00088, (*Order Approving Promotional Tariff and Denying Complaint and Petition to Intervene*) p. 2 (April 24, 2002). Further, on May 9, 2003, Citizens filed a complaint against BLC, alleging that BLC offered untariffed special promotions and unlawfully utilized Citizens' network facilities to provide service to former Citizens customers. This matter has been assigned Docket No. 03-00331.

³ Citizens' April 11, 2002 tariff filing was assigned Tariff No. 2002-00173.

⁴ The portion of the complaint involving discriminatory behavior was rejected based upon the precedent set in Docket No. 02-00088, mentioned in note 2, herein. See *Complaint of Ben Lomand Communications, Inc. Against Citizens Communications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee*, Docket No. 02-01221, (*Order Convening Contested Case and Appointing Pre-Hearing Officer*) pp. 5-6 (April 29, 2003).

should dismiss the *Petition for Exemption*. BLC contends that rather than convene a contested case, the TRA should address the factors necessary for exemption from the price floor through a rulemaking proceeding. BLC further asserts that exemption from the price floor is permissible only when in the public interest, not merely because an ILEC faces competition.

The July 7, 2003 Authority Conference

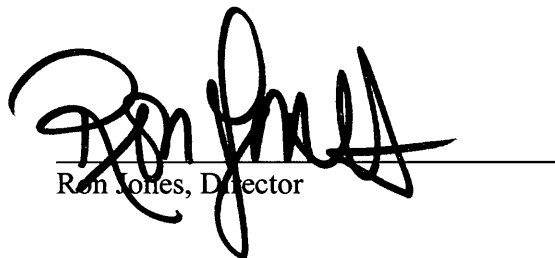
At the regularly scheduled Authority Conference held on July 7, 2003, the panel found that the disposition of the issues in Docket No. 02-01221 may resolve or inform the issues raised in Docket No. 03-00211. The panel voted unanimously to hold Docket No. 03-00211 in abeyance pending the resolution of Docket No. 02-01221. After Docket No. 02-01221 is resolved, the panel will consider whether to convene a contested case in Docket No. 03-00211.

IT IS THEREFORE ORDERED THAT:

Docket No. 03-00211 shall be held in abeyance pending the Authority's resolution of Docket No. 02-01221.


Deborah Taylor Tate, Chairman


Pat Miller, Director


Ron Jones, Director